

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC WITHERSPOON, professionally
known as DORIAN MOOR, an
individual,

Plaintiff,

v.

CARLA GREEN, an individual;
KARRYL SMITH, an individual;
CARLA GREEN and KARRYL SMITH,
professionally known as THE
CONSCIOUS DAUGHTERS; OSCAR JEROME
JACKSON, JR., professionally
known as PARIS, an individual;
GUERRILLA FUNK RECORDINGS AND
FILM WORKS, LLC, a California
limited liability company;
FONTANA DISTRIBUTION, LLC, a
Delaware limited liability
company; STEVEN ANDERSON, also
known as STEVEN KING, an
individual; and DOES 1 through
200, inclusive ,

Defendants.

No. C 10-3722 CW

ORDER DENYING
DEFENDANTS'
REQUEST FOR
EMERGENCY CASE
MANAGEMENT
CONFERENCE (Docket
No. 68)

Defendants Carla Green, Oscar Jackson, Guerilla Funk
Recordings and Filmworks, LLC, and Fontana Distribution, LLC,
submitted a request for an emergency case management conference.
Docket No. 68. Such requests must be made as a properly noticed
administrative motion pursuant to this Court's Civil Local Rule 7-
11, or a motion pursuant to Local Rule 7-2, accompanied by a
motion to shorten time under Rule 6-3, if necessary. Moving

1 parties are also required to serve by mail parties who are not
2 registered for e-filing, such as Plaintiff in this action.
3 General Order 45 IX.C(2).

4 Nevertheless, the Court considers Defendants' request because
5 Plaintiff has responded, stating the reasons for his opposition to
6 setting a case management conference.

7 Defendants seek a case management conference "to resolve
8 potentially case-dispositive issues." Defendants contend that
9 Plaintiff admitted in his February 3, 2012 deposition that he
10 failed to obtain a valid copyright registration, and that he
11 granted a license for the use of his alleged work. Accordingly,
12 Defendants assert that the case should be dismissed. Thus, it
13 appears that Defendants seek a case management conference to
14 discuss amending the case management schedule to allow for a
15 motion for summary judgment. Plaintiff denies that he made such
16 admissions at his deposition and claims that Defendants have
17 mischaracterized his testimony. None of the parties has submitted
18 a copy of the transcript. Defendants submitted an addendum to
19 their request for an emergency case management conference, but the
20 submission does not include any excerpts from Plaintiff's
21 deposition.

22 Defendants have waived their opportunity to submit case
23 dispositive motions to resolve the matter, whereas Plaintiff has
24 diligently prosecuted his case. Defendant Green did not answer
25 the complaint until after the Court set aside entry of default
26 against her on December 23, 2011. The Court reopened discovery
27 for a limited purpose and rescheduled the five day jury trial that
28 had been set to begin on January 30, 2012.

1 Defendants Oscar Jackson, Guerilla Funk Recordings and
2 Filmworks, LLC, and Fontana Distribution, LLC also waived their
3 opportunity to file a motion for summary judgment. They were
4 represented by counsel at the March 29, 2011 case management
5 conference. Based on that conference, the Court entered a case
6 management order providing that fact discovery would end on
7 September 30, 2011, and all case-dispositive motions would be
8 heard on September 22, 2011. In addition, a further case
9 management conference was scheduled for September 22, 2011.
10 However, no case-dispositive motions were filed and Defendants did
11 not appear for the case management conference. Accordingly, the
12 Court determined that the case would proceed with pretrial
13 preparations. Docket No. 39. Given that this trial has already
14 been rescheduled once before, and Defendants had the opportunity
15 previously to move for summary judgment, the Court declines to
16 delay the trial again and hold a case management conference. At
17 the December 22, 2011 hearing on Defendant Green's motion to set
18 aside the entry of default against her, the Court recognized that
19 Plaintiff had prosecuted his case diligently, as compared to
20 Defendants, and indicated that it would not entertain late-filed
21 case dispositive motions from Defendants.

22 The other issues that Defendants have raised in their request
23 and the addendum to their request do not warrant scheduling an
24 emergency case management conference. It acceptable for the
25 parties to meet for a settlement conference after the pre-trial
26 conference is held. Furthermore, Judge James has since resolved
27 the outstanding discovery dispute regarding Plaintiff's request
28 for admissions. The other discovery disputes related to

1 Plaintiff's deposition and his delay in exchanging his trial
2 documents with Defendants do not warrant setting a new case
3 management conference. The parties shall appear for their final
4 pretrial conference on March 7, 2012 at 2:00 pm.

5 IT IS SO ORDERED.

6
7 Dated: 2/24/2012


CLAUDIA WILKEN
United States District Judge